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SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1829

THE PEOPLE OF THE STATE OF MICHIGAN

Petitioner

vs.

MORGAN COY COMBS,

Respondent

ON A PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF
THE STATE OF MICHIGAN

RESPONDENT'S REPLY IN OPPOSITION

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RESPONDENT'S REPLY IN OPPOSITION

NOW COMES Respondent, Morgan Coy Combs, by and through his attorney, Steven Rabinovitz, in reply to a Petition for Writ of Certiorari to review the judgment of the Court of Appeals of the State of Michigan, entered in the above-entitled cause on August 23, 1979, leave to appeal denied by the Michigan Supreme Court on March 17, 1980, and prays that said Writ be denied.

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RE-STATEMENT OF QUESTION PRESENTED

CAN HEARSAY INFORMATION SUPPLIED BY AN IDENTIFIED CITIZEN WHO IS NOT AN EYEWITNESS TO A POSSIBLE OFFENSE, AND WHICH CONTAINS NO SELF-CORROBORATING DETAILS GIVE RISE TO PROBABLE CAUSE FOR AN ARREST?

REASONS FOR DENYING THE WRIT

The petitioner properly notes that information received from an anonymous informant, or from an informant associated with the criminal elements must meet certain tests of credibility before it will give rise to probable cause for an arrest or the issuance of a search warrant. Draper v United States,359 US 307 (1959); Aguilar v Texas,378 US 108 (1964);Spinelli v United States, 393 US 410 (1969). However, it does not naturally follow that if the information is received from a known citizen not associated with the criminal elements that the information will in all instances give rise to probable cause for an arrest.

It must be remembered that the purpose of Draper, Aguilar and Spinelli is to insure both the credibility of the informant and the reliability of the information so as to prevent searches based upon an unknown informants tip that may or may not reflect anything more than idle rumor or irresponsible conjecture. United States v Bell, 457 F2d 1231 (CA 5, 1972). The petitioner contends that no credibility or reliability tests are required for citizen informants.

> "We have discovered no case that extends this requirement to the identified bystander or victim eyewitness to a crime, and we now hold that no such requirement need be met." Bell, supra, 1238-1239.

The reason for not requiring an independent basis of

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credibility and reliability for eyewitness information is self-evident.

> "Eyewitnesses by definition are not passing along idle rumor for they either have been the victims of the crime or have otherwise seen some portion of it." Bell, supra.

It is the personal observation which supplies the reliability factor otherwise required. United States v Rollins, 522 F2d 160 (1975). Even where the credibility of the informant cannot be established

> "probable cause for an arrest may exist where an unknown citizen makes complaints, as a victim or eyewitness to a crime, where the underlying circumstances demonstrate his first hand personal knowledge. McCreary v Sigler, 406 F2d 1264, 1269 (CA 8, 1969) cert den, 395 US 984 (1969).

It is the detail of an eyewitness report that supplies the indicia of reliability. United States v Banks, 539 F2d 14 (CA 9, 1976).

In the instant case, hoever, the information given to the arresting officer was not given by an eyewitness nor was it so detailed so as to supply its own indicia of reliability. The bald assertion by an otherwise credible informant that a waitress told him that she had seen the accused "snorting what she believed to be cocaine" is nothing more than irresponsible conjecture. Other than that statement, there were no facts or circumstances which would warrant a reasonably prudent man in believing that the accused had committed or was committing an offense. Accordingly the arresting officer clearly lacked probable cause to arrest the respondent. Holbrook v United States, 406 F2d 44 (CA 10, 1969).

Nor, as petitioner contends, should the exigency of the circumstances substitute for probable cause. It must be

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remembered that a limited search incident to a valid arrest is the exception to the fourth amendment requirement of first obtaining a search warrant. The petitioner is now asking this Court to extend that exception to instances involving mere suspicion not otherwise amounting to probable cause for an arrest due to exigent circumstances. Such an intrusion on personal liberties should not be countenanced. What petitioner fails to distinguish in his example is the right to briefly detain the pursued individual for further investigation, as opposed to an automatic right to arrest and search merely because someone shouts "stop thief".

Although not precisely stating its basis, the opinion of the Michigan Court of Appeals properly concluded that the information, although submitted by an identified citizen informant, was not the product of an eyewitness observation. Nor did it contain such detail as to make it self-corroborating as is normally the case with eyewitness accounts, and accordingly it was not sufficiently reliable to give probable cause for an arrest of the respondent. It was thus in keeping with other decisions of this Court and does not require plenary review.

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CONCLUSION

WHEREFORE, for the foregoing reasons, respondent requests that plenary review be denied.

Repectfully submitted,

BERNSTEIN & RABINOVITZ, P.C.

By: Steven Rabinovitz

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Dated:August 27, 1980

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MOTION TO PROCEED IN FORMA PAUPERIS

NOW COMES your Respondent, Morgan Coy Combs, by and through his attorney, Steven Rabinovitz, and in support of his motion to proceed in forma pauperis says as follows:

1) That he is the respondent in the pending proceeding.

2) That he has substantial interest in responding to said petition and showing this Court why said petition should not be granted.

3) That respondent is without funds to hire an attorney or to file a formal response as required under Rule 22 of the Rules of the Supreme Court.

4) That respondent request appointment of counsel to prepare post conviction proceedings following his conviction in the Circuit Court for the County of Wayne which request was granted by said court.

WHEREFORE, respondent prays that he be permitted to proceed in forma pauperis as provided in Rule 46 of the Rules

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of the Supreme Court.

Respectfully submitted,

BERNSTEIN & RABINOVITZ, P.C.

BY: Steven Rabinovitz

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AFFIDAVIT IN SUPPORT OF MOTION
TO PROCEED IN FORMA PAUPERIS

STATE OF MICHIGAN)
)ss
COUNTY OF OAKLAND)

Steven Rabinovitz, being first duly sworn, deposes and says as follows:

1) That he was substituted for Ronald P. Weitzman as appointed counsel on appeal for respondent Morgan Coy Combs by Judge William L. Cahalan of the Circuit Court of the County of Wayne.

2) That he has duly complied with the requirements of said appointment and has filed a brief in opposition to petitioner's application for leave to appeal to the Supreme Court of the State of Micihgian, which application was denied.

3) That he has attempted to contact the respondent on various occassions but has been unsuccessful in obtaining respondent's current address or phone number, as indicated on the copies of the returned envelopes attached hereto.

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4) That he has attached a copy of the petition for appointment of counsel to prepare post conviction proceedings and the affidavit of financial condition in support thereof previously prepared and signed by the respondent and filed in the Wayne County Circuit Court.

5) That he has no reason to believe that respondent can now afford to pay for an attorney to represent him in these proceedings or to pay for the costs of a formal reply.

Further deponent sayeth not.

Steven Rabinovitz

Subscribed and sworn to before me this 27th day of August, 1980.

YVONNE MARIE GERACE
Notary Public, Macomb County, Michigan
My Commission Expires March 14, 1981

NOTARY PUBLIC

My Commission Expires 3-14-81

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